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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,718	07/23/2003	David Ryan Breese	88-2042A	8126
33967	7590	01/18/2005	EXAMINER	
EQUISTAR CHEMICALS, L.P. 11530 NORTHLAKE CINCINNATI, OH 45249			ZEMEL, IRINA SOPHIA	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/625,718	BREESE ET AL.	
	Examiner	Art Unit	
	Irina S. Zemel	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9-12-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,247,584 to Widiger et al., (hereinafter "Widiger").

The reference discloses ethylene-vinyl acetate (EVA) compositions comprising a mixture of two different EVA copolymers. The blends disclosed in Widiger are comprised of about 10 to 90 weight percent of a low EVA random copolymer containing about 2 to 12 percent of vinyl acetate and having a melt index of about 0.2 to 10, and about 90 to 10 weight percent of a high EVA random copolymer containing about 8 to 30 percent of vinyl acetate and having a melt index of about 0.2 to 5. In the blend, the percent of vinyl acetate in the low EVA copolymer is below that in the high EVA copolymer, and the weight average vinyl acetate content is about 4 to 15 percent. See column 3, lines 5-21. Thus, the amounts of respective components, vinyl acetate content of each copolymers and the overall vinyl acetate content of the blend disclosed in the reference overlap with the claimed limitations and, therefore, all of the limitations regarding as per claims 1-6 and 9-12 are fully met by the disclosed blends. Choosing any parameters, including parameters corresponding to specific amounts of components and specific content of vinyl acetate in the components and the blends

Art Unit: 1711

corresponding to each of the claims from disclosed ranges would have been obvious for an ordinary artisan with reasonable expectation that any parameters/amount from the explicitly disclosed range would provide adequate results, absent showing of unexpected results that can be attribute to the specifically claimed limitations. The reference discloses that preferred blend exhibit lower melt index (MI) than the MI claimed in claims 7 and 8. However, MI corresponding to the claimed MI are within the purview of the reference based on individual MI of the components and their respective amount. Furthermore, it is well known in the art that the mechanical and processability characteristics of the polymer and polymer blend depend on the MI of the polymers and varying MI with expectation to vary corresponding mechanical properties of the polymer is well within the skills of ordinary artisan absent shoeing of unexpected results that can be clearly attributed to the claimed MI.

Therefore, the invention as claimed in claims 1-12 would have been obvious from the disclosure of the reference absent showing of unexpected results.

Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,635,261 to Georgelos et al., (hereinafter "Georgelos").

The reference discloses ethylene-vinyl acetate (EVA) compositions comprising a mixture of two different EVA copolymers. The blends disclosed in Georgelos are comprised of major amount – greater than 50 %- of one copolymer and minor amount of the other copolymer. The content of vinyl acetate of either of the copolymers can be from 4 to 28 %, which corresponds to vinyl acetate content of either of the claimed

Art Unit: 1711

copolymers. See column 6, line 57 to column 7, line 14. The reference does not expressly address the overall content of vinyl acetate in the blend, however, the overall content of vinyl acetate corresponding to the claimed content is within the purview of the reference based on the respective amounts of the first and the second copolymer and the vinyl acetate content of individual copolymers. Choosing any copolymer, their combinations and blend with specifically claimed vinyl acetate content from the expressly disclosed range of vinyl acetate contents (including those corresponding to the claimed contents) would have been obvious for an ordinary artisan absent showing of unexpected results that can be attributed to the specifically claimed limitations. Therefore, the invention as claimed in claims 1-6 and 9-12 would have been obvious from the disclosure of the reference absent showing of unexpected results.

Discussion of improved and unexpected/synergistic properties of the claimed compositions presented in the specification are duly noted. However, the improved characteristics of the compositions according to the invention are only shown as compared to individual EVA copolymers used in the blends. No data regarding unexpected properties that can be attributed to either the claimed characteristics of the first and the second EVA copolymer in the blend (claimed EVA content of each component as per broad claim or MFI as per dependent claims), their ratio in the blend or the characteristic of the blend (EVA content of the blend as per broad claim or MFI as per dependent claims), is presented on the record at this time. Therefore, as discussed above, the invention as claimed, would have been obvious from the disclosure of the cited references.

Art Unit: 1711

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Irina S. Zemel
Examiner
Art Unit 1711



ISZ